

Feb 28, 2011

Summary of EPA Findings Related to "Complaint Response" Excerpted from the Oregon Department of Agriculture (ODA) End-of-Year Review Report

Background

EPA provided ODA with \$445,270 in federal funds through the cooperative agreement.

The end-of-year evaluation for FY 2010 was conducted on-site at ODA's Salem office on October 14 and 15, 2010, by Chad Schulze, Linda Liu, Allan Welch, and Erin Halbert.

Summary section

As part of this year's evaluation, EPA Region 10 also reviewed ODA case files in which individuals and/or interest groups questioned the thoroughness and credibility of the complaint investigations. This additional review went beyond the standard annual review period and looked at complaints filed with ODA from August 2004 to June 2010 and which generally focused on pesticide drift complaints from the Highway 36 area of the Central Coastal Range. We found that while ODA had invested a significant amount of time, effort, and resources in responding to complaints, a number of areas were identified for improvement. For example, we found that ODA does not appear to have a consistent approach for when and how to collect evidentiary samples during complaint inspections, for determining when samples that were collected should be fully analyzed, or for documenting the reasons a particular sampling and analysis approach was used. EPA Region 10 has discussed these findings with ODA and has committed to work cooperatively with the Department to develop improved procedures for inspection sampling, analysis, and documentation.

ODA Case Review and Enforcement Action Evaluation

This year, EPA Region 10 conducted an enhanced review of ODA files related to complaints from the general public. This was in response to several complaints that came directly to EPA Region 10, expressing dissatisfaction about ODA's response to their reported alleged pesticide drift violations, alleged adverse effects to property, and alleged human exposures and adverse health effects. EPA Region 10 reviewed 78 files ... mostly focused on Highway 36 Investigation Reports from August 30, 2004, to June 17, 2010, PARC/ODA investigation reports from 1997 to 2003, and other investigation reports from the central Coastal Range region of Oregon.

From these files, EPA's observations were as follows:

- a. ODA invested a significant amount of time and resources responding to and coordinating with the complainants involved in the cases reviewed. Many times, ODA spoke with the complainants and visited the sites multiple times. ODA also invested significant resources in coordinating with other state agencies, the operators, and applicators involved in the complaints.

- b. ODA investigation reports were generally adequate and contained documentation, such as notice of inspections, maps, application records, weather data, photos, labels, and witness interviews.
- c. Most of ODA's actions seemed reasonable and appropriate for the information collected.
- d. ODA rarely collected physical samples in the cases reviewed. When ODA did collect samples, not all were analyzed. The lack of comprehensive sampling data made it difficult to conclude if pesticide drift and/or exposure occurred.

Adding more sampling would increase the strength and transparency of ODA decisions and actions. Out of 66 cases ... ODA only collected samples for four cases and analyzed for three cases.

- e. It was not clear in many cases why ODA did or did not collect or analyze samples. EPA Region 10 rarely found the rationale of why samples were or were not needed.
- f. It was not clear where and how samples were collected once ODA determined that samples were needed. The rationale for sample locations and type (composite or individual) were not found in the case files.
- g. It was not clear how ODA determined the appropriate level of resources dedicate to PCLs since ODA showed such a wide range of effort throughout the 41 PCLs reviewed.

ODA often invested significant resources responding to a complaint and recorded the activities conducted into PCLs without officially classifying the work as an inspection.

- h. Not all complaints were followed through with an inspection. Only in some cases, ODA conducted inspections after PCLs were initiated. In addition, not all PCLs included a description of why an inspection was or was not conducted after the PCL was initiated. It was not clear what conditions must be met for ODA to conduct an inspection after a complaint is received.
- i. It was not clear in the PCLs if ODA's decisions or outcomes of the investigations and inspections were communicated back to the complainant. Adding this component to the PCL would improve the clarity, completeness, and transparency of these cases.
- j. In one case [PCL052307], ODA appeared not to investigate a possible discrepancy uncovered during the initial stages of a PCL. After telephone conversations with the operator, ODA noticed a significant difference between the rates described by the operator and those allowed on the pesticide label. The operator stated that he may have applied the pesticide at twice the label rate. ODA also discovered that because the operator applied a general use pesticide on his own property, he was not required to maintain any application records. ODA sent a Letter of Advisement to the operator but did not conduct any follow-up inspections or request application records or written statement to verify if the over application actually occurred or not.

- k. ODA investigations most often conclude there is no evidence of exposure or violation. While that may be true, such a statement has been interpreted as concluding that an exposure or violation did not or could not have occurred.
- l. File organization made it difficult to follow the case. Most cases did not have tabbed attachments which made it extremely difficult to refer from the narrative to the attachments. Enforcement actions also appeared randomly in the case file. There seemed to be no consistent order to the way files and attachments were compiled.
- m. When the source of the drift was difficult to isolate (multiple users in the area at the same time using the same pesticide), ODA issued Letter of Advisement in one case but did not in the other [PCL 071708].

Note – the Report also included a series of EPA recommendations for each of these areas.

In addition to EPA findings, the ATSDR has publicly released the following:

Why did ATSDR go to the PARC board meeting?

EPA Region 10 requested ATSDR assistance in addressing community health concerns about pesticides. The Oregon Department of Agriculture (ODA) requested that as part of the decision process, ATSDR review past ODA pesticide complaint investigations relevant to the Highway 36 Corridor.

The purpose of this review was to determine whether ODA investigations have been adequate or capable of confirming drift and/or exposure from application of pesticides in the area, and whether ATSDR and CDC's National Center for Environmental Health could offer expertise that may assist in confirming or eliminating such a link.

What was presented at the meeting?

ATSDR Senior Regional Representative Richard Kauffman shared initial feedback from ATSDR's review of ODA investigations and other information with the Pesticide Analytical Response Center (PARC) Board during its November 17, 2010 meeting.

- ATSDR's initial review found that in most cases, ODA investigations lacked sufficient environmental or exposure data to make a conclusive determination regarding drift and exposure.
- ATSDR's initial review of the ODA investigations and other information suggests that chemical migration (drift) from application sites in this area is plausible given the topography and localized weather patterns, the proximity of some applications to residents, and the properties of the pesticides used.

- This initial observation would need to be confirmed by a comprehensive analysis of the available information.

- ATSDR is continuing to collect and evaluate additional information to determine whether it would be appropriate and useful to take further action.